

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1186 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

SHARDABEN V SHETH

Versus

COMPETENT AUTHORITY AND ADDL COLLECTOR

Appearance:

Shri J.R. Nanavatya, Advocate, for the Petitioner

Shri T.H. Sompura, Assistant Government Pleader,
for the Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 08/07/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No. 1 herein) on 4th January 1985 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in

appeal by the common appellate order passed by the Urban Land Tribunal at Ahmedabad (Respondent No. 2 herein) on 10th October 1988 inter alia in Appeal No. Rajkot-20 of 1985 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 1 declared the holding of the petitioner as a partner of her partnership firm to be in excess of the ceiling limit by 6594 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioner and one Indiraben had purchased in partnership one parcel of land bearing survey No. 402 admeasuring 2 acres situated within the urban agglomeration of Rajkot (the disputed land for convenience). It appears that later on some time in 1969 the petitioner entered into sub-partnership with on Popatlal so far as her share in the disputed land was concerned. The share of both the sub-partners was equal. It would mean that both the sub-partners would have 25% share each in the disputed land. It appears that the partnership firm filed its declaration in the prescribed form under sec. 6(1) of the Act with respect to the disputed land. It was duly processed by respondent No. 1. After observing necessary formalities under sec. 8 of the Act, by his order passed on 4th January 1985 under sub-section (4) thereof, respondent No. 1 declared the holding of the partnership firm to be in excess of the ceiling limit by 6594 square meters. Its copy is at Annexure A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No. 2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-20 of 1985. It was heard with Appeal No. Rajkot-17 of 1985. By the common appellate order passed in both the aforesaid appeals on 10th October 1988, respondent No. 2 dismissed both the appeals. Its copy is at Annexure B to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition.

3. Learned Advocate Shri Nanavaty for the petitioner has fairly stated at the Bar that the petitioner has restricted her challenge to the extent of clubbing of her share with that of her husband. He has however fairly submitted that the petitioner has not moved this petition for challenging the impugned orders on behalf of the partnership firm or an association of persons.

4. It may be mentioned that the petitioner's husband

had also challenged the order passed by the Competent Authority and the appellate authority in his case inter alia on the ground that his wife's share in the disputed land ought not to have been clubbed with his holding. He also approached this court by means of Special Civil Application No. 1185 of 1989. That has been disposed of in his favour even after taking into consideration his wife's share in the disputed land in his holding. In that view of the matter, this petition can be said to have become infructuous as the challenge is restricted only to the clubbing of the petitioner's share in the disputed land in the holding of her husband.

5. Whether or not the wife's share should be clubbed in the holding of her husband would become an academic question for the purpose of this petition. This court need not dwell upon any academic question for its own sake.

6. In view of my aforesaid discussion, I am of the opinion that this petition does not deserve to be entertained as having become infructuous in view of what has been submitted by learned Advocate Shri Nanavaty for the petitioner.

7. In the result, this petition fails as having become infructuous. Rule is accordingly discharged with no order as to costs.

the